STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0958

In the Matter of the Welfare of the Children of:
R. L. W. and S. F. M., Parents.

Filed January 22, 2018
Affirmed
Rodenberg, Judge

St. Louis County District Court
File Nos. 69DU-JV-15-368, 69DU-JV-16-581

Bill L. Thompson, Law Office of Bill L. Thompson, Duluth, Minnesota (for appellant-father S.F.M.)

Mark S. Rubin, St. Louis County Attorney, Benjamin Stromberg, Assistant County Attorney, Sara Jankofsky, Assistant County Attorney, Duluth, Minnesota (for respondent St. Louis County)

Elisa Beyer, Duluth, Minnesota (guardian ad litem)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant S.F.M. appeals from the district court's order terminating his parental rights to two children. He challenges each of the four statutory grounds on which the district court relied in terminating his rights: that appellant inflicted egregious harm under Minn. Stat. § 260C.301, subd. 1(b)(6) (2016); that he is palpably unfit to parent under

Minn. Stat. § 260C.301, subd. 1(b)(4) (2016); that the children are neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8) (2016); and that reasonable efforts failed to correct the conditions leading to the children's out-of-home placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2016). Record evidence supports the district court's findings, and the district court did not abuse its discretion in terminating appellant's rights. We affirm.

D E C I S I O N

We review the termination of parental rights "to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous "if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008). "Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). We give deference to the district court's ultimate conclusion, *In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005), and review that conclusion under an abuse-of-discretion standard, *In re Welfare of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

I. The record supports the district court's finding that S.F.M. is palpably unfit to parent.

Appellant challenges the district court's determination that he is palpably unfit to parent. A district court may terminate parental rights to a child it if finds that the parent

> is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). The petitioner must prove "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *J.R.*, 750 N.W.2d at 661 (citation omitted).

Record evidence supports the district court's findings concerning appellant's palpable unfitness. Appellant failed to take responsibility for exposing child 1[1] to adult sexual activity. Appellant masturbated near child 1, at least one time ejaculating onto the child's arm, engaged in sexual intercourse while child 1 was in the room, and permitted child 1 to view cell-phone videos of sexual encounters between appellant and child 1's mother. Appellant admitted that, while in the bathtub with child 1, the child put the child's mouth on appellant's penis. "This happened more than once." The district court found that "the totality of the evidence paints a picture that at its worst is the intentional sexual

[1] We accept the convention used by the district court and by the parties on appeal to designate the two children. Child 1 is the older child and child 2 is the younger child.

abuse of a four-year-old child by [the child's] father and at its best is an irresponsible, wholly inappropriate, and damaging lack of boundaries regarding adult activity." The district court's findings are not clearly erroneous. The evidence supports those findings. Therefore, we cannot say that the district court abused its discretion by ruling appellant to be palpably unfit to be a party to the parent-child relationship.

To terminate parental rights, the petitioner must provide clear and convincing evidence that one of the statutory grounds justifying termination under Minn. Stat. § 260C.301, subd. 1(b), is satisfied. *T.A.A.*, 702 N.W.2d at 708. "Only one ground must be proven for termination to be ordered." *Id.* Here, the district court also found that the children suffered egregious harm, are neglected and in foster care, and that reasonable efforts failed to correct conditions leading to the children's out-of-home placement. It appears to us that the record supports each of these grounds as well, but because the record amply supports the district court's palpable-unfitness finding, we do not exhaustively discuss the other statutory bases for termination found by the district court. *See In re Welfare of A.D.*, 535 N.W.2d 643, 650 (Minn. 1995).

II. The record supports the district court's finding that reasonable efforts were made to reunify appellant with his children.

Reasonable efforts to reunify the child and the parent and to rehabilitate the parent and reunite the family are required by law. Minn. Stat. § 260C.301, subd. 8(1) (2016). A district court's finding that reasonable efforts were made to reunify parent and children is reviewed for clear error. *S.E.P.*, 744 N.W.2d at 387. When assessing the reasonableness of efforts, courts consider "the length of time the county was involved and the quality of

effort given." *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). The petitioner must target reunification efforts at alleviating the conditions giving rise to the out-of-home placement, and conform those efforts to the problems presented. *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996). The reasonable efforts also must be culturally appropriate and meet the needs of the child and the family. Minn. Stat. § 260.012(f) (2016). A presumption that reasonable efforts were made and were unsuccessful arises when

> (i) a child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight at the time the petition was filed alleging the child to be in need of protection or services, the presumption arises when the child has resided out of the parental home under court order for six months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan;
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> (ii) the court has approved the out-of-home placement plan . . . ;
>
> (iii) conditions leading to the out-of-home placement plan have not been corrected[, which is presumed] upon a showing that the parent or parents have not substantially complied with the court's orders and a reasonable case plan; and
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> (iv) reasonable efforts have been made by the social services agency to rehabilitate the parent and reunite the family.

Minn. Stat. § 260C.301, subd. 1(b)(5)(i)-(iv).

The district court's order references each of the four statutory considerations. First, the children were removed from appellant's home after the district court adjudicated the children as children in need of protection or services. In addition to the out-of-home placement plan, the district court ordered that appellant comply with the reunification plan

and with the court's orders. Appellant did not substantially comply with the court's order, the case plan, the parenting plan, or the recommendations both contained in and resulting from the plan. The district court found that the petitioner made reasonable efforts to provide services to appellant, but those reasonable efforts failed to correct the conditions leading to the out-of-home placement. The record supports this finding.

Appellant was provided, in an effort to reunify, a psychosexual evaluation, a parent-education program, efforts to stabilize appellant's mental-health issues and establish appropriate family boundaries, assistance with anger-management issues, efforts to establish and maintain a safe and clean home environment, and other services as part of the out-of-home placement plan. Although appellant submitted to the psychosexual evaluation, he largely failed to comply with any of the recommendations. Appellant attended therapy sessions, but only for a short time. After missing several sessions, those services were terminated. Appellant ultimately refused to attend further therapy, participate in medication management, or submit to a polygraph test. The record demonstrates real efforts to reunify and an absence of effort by appellant to accomplish that goal. The district court did not clearly err in finding that reasonable efforts were made to reunify appellant with his children.

III. The record supports the district court's finding that termination of parental rights is in the best interests of the children.

Whether termination of parental rights is in the children's best interests is "the paramount consideration." *In re Welfare of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012); Minn. Stat. § 260C.301, subd. 7 (2016). In

considering the best interests of a child, the district court must balance three factors: "(1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). Competing interests may include "a stable environment [and] health considerations." *R.T.B.*, 492 N.W.2d at 4. We apply an abuse-of-discretion standard to a district court's determination concerning the children's best interests. *J.R.B.*, 805 N.W.2d at 905.

Here, the district court found that it is in the children's best interests to terminate appellant's parental rights because he cannot appropriately care for the children. Both children are in foster care and require a timely, safe, and stable home environment. *See In re Welfare of R.D.L.*, 853 N.W.2d 127, 134-35 (Minn. 2014) (discussing the importance of timely permanency for children placed out of the parental home). The district court found that "[a] continued relationship with their father would be far more hazardous and harmful than beneficial to the children" because appellant continues to struggle with the issues that led to the initial out-of-home placement.

Record evidence supports the district court's best-interests determination. Child 1 has suffered significant trauma and continues to suffer from the effects of that trauma. The guardian ad litem reported that child 1 "has already suffered greatly and will likely struggle with these [post-traumatic] issues for many years to come." Child 1 has gone through treatment programs, but the child's needs can only be met by someone who "is skilled, calm, and very patient, to keep [the child] safe." With continued care and services, both

children can be "raised in a safe, stable and healthy environment." Although appellant wants to care for his children, their interests outweigh his. The district court did not err in finding on this record that termination of appellant's parental rights is in the best interests of these children.

Because record evidence supports the district court's findings, and because the district court properly applied the law to those findings, the district court did not abuse its discretion when it terminated appellant's parental rights to both children.

Affirmed.